



House of Representatives

General Assembly

File No. 648

January Session, 2015

Substitute House Bill No. 6287

House of Representatives, April 15, 2015

The Committee on Public Health reported through REP. RITTER of the 1st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING REPORTS OF IMPAIRED HEALTH CARE PROFESSIONALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015*) (a) As used in this
2 section:

3 (1) "Health care professional" means any person licensed or who
4 holds a permit pursuant to chapter 372, 373, 375 to 378, inclusive, 379
5 to 381a, inclusive, 383 to 385, inclusive, 398 or 399 of the general
6 statutes;

7 (2) "Assistance program" means the program established pursuant
8 to section 19a-12a of the general statutes to provide education,
9 prevention, intervention, referral assistance, rehabilitation or support
10 services to health care professionals who have a chemical dependency,
11 emotional or behavioral disorder or physical or mental illness; and

12 (3) "Hospital" has the same meaning as provided in section 19a-490

13 of the general statutes.

14 (b) (1) Any health care professional or hospital shall, and any other
15 person may, file a petition when such health care professional, hospital
16 or person has any information that appears to show that a health care
17 professional is, or may be, unable to practice his or her profession with
18 reasonable skill or safety for any of the following reasons: (A) Physical
19 illness or loss of motor skill, including, but not limited to, deterioration
20 through the aging process; (B) emotional disorder or mental illness; (C)
21 abuse or excessive use of drugs, including alcohol, narcotics or
22 chemicals; (D) illegal, incompetent or negligent conduct in the practice
23 of the profession of the health care professional; (E) possession, use,
24 prescription for use or distribution of controlled substances or legend
25 drugs, except for therapeutic or other medically proper purposes; (F)
26 misrepresentation or concealment of a material fact in the obtaining or
27 reinstatement of a license to practice the profession of the health care
28 professional; or (G) violation of any provision of the chapter of the
29 general statutes under which the health care professional is licensed or
30 any regulation established under such chapter.

31 (2) A health care professional or hospital shall, and any other person
32 may, file a petition described in this subsection not later than thirty
33 days after obtaining information to support such petition. Each
34 petition shall be filed with the Department of Public Health on forms
35 supplied by the department, shall be signed and sworn and shall set
36 forth in detail the matters complained of.

37 (c) Any health care professional or hospital that refers a health care
38 professional for intervention to the assistance program shall be
39 deemed to have satisfied the obligations imposed on the health care
40 professional or hospital pursuant to this section with respect to a
41 health care professional's inability to practice with reasonable skill or
42 safety due to chemical dependency, emotional or behavioral disorder
43 or physical or mental illness.

44 (d) A health care professional who has been the subject of an arrest
45 arising out of an allegation of the possession, use, prescription for use

46 or distribution of a controlled substance or legend drug or alcohol or
47 diagnosed with a mental illness or behavioral or emotional disorder
48 shall, not less than thirty days after such arrest or diagnosis, notify the
49 Department of Public Health. The health care professional shall be
50 deemed to satisfy this obligation if the health care professional seeks
51 intervention with the assistance program.

52 (e) A health care professional shall report to the department any
53 disciplinary action similar to an action specified in subsection (a) of
54 section 19a-17 of the general statutes taken against the health care
55 professional by a duly authorized professional disciplinary agency of
56 any state, the District of Columbia, a United States possession or
57 territory or a foreign jurisdiction, not later than thirty days after such
58 action. Failure to report in accordance with the provisions of this
59 subsection may constitute a ground for disciplinary action under
60 section 19a-17 of the general statutes.

61 (f) No health care professional, hospital or person filing a petition in
62 accordance with the provisions of this section or providing
63 information to the department or the assistance program shall, without
64 a showing of malice, be liable for damage or injury to the health care
65 professional. The assistance program shall not be liable for damage or
66 injury to the health care professional without a showing of malice.
67 Such health care professional, hospital or other person filing the
68 petition and the assistance program shall be entitled to indemnification
69 and defense in the manner set forth in section 5-141d of the general
70 statutes with respect to a state officer or employee.

71 (g) The department shall investigate each petition filed pursuant to
72 this section in accordance with the provisions of subdivisions (10) and
73 (11) of subsection (a) of section 19a-14 of the general statutes, to
74 determine if probable cause exists to issue a statement of charges and
75 to institute proceedings against the health care professional under
76 subsection (j) of this section. Such investigation shall be concluded not
77 later than eighteen months after the date the petition is filed with the
78 department and, unless otherwise specified by this subsection, the

79 record of such investigation shall be deemed a public record, in
80 accordance with section 1-210 of the general statutes, at the conclusion
81 of such eighteen-month period. Any such investigation shall be
82 confidential prior to the conclusion of such eighteen-month period and
83 no person shall disclose his or her knowledge of such investigation to a
84 third party unless the health care professional requests that such
85 investigation and disclosure be open, except the department shall
86 provide information to the person who filed the petition as provided in
87 subdivision (12) of subsection (a) of section 19a-14 of the general
88 statutes. If the department determines that probable cause exists to
89 issue a statement of charges, the entire record of such proceeding shall
90 be public unless the department determines that the health care
91 professional is an appropriate candidate for participation in the
92 assistance program. If at any time subsequent to the filing of a petition
93 and during the eighteen-month period following the filing of the
94 petition, the department makes a finding of no probable cause, the
95 petition and the entire record of such investigation shall remain
96 confidential, except as provided in subdivision (12) of subsection (a) of
97 section 19a-14 of the general statutes, unless the health care
98 professional requests that such petition and record be open.

99 (h) As part of an investigation of a petition filed pursuant to this
100 section, the department may order the health care professional to
101 submit to a physical or mental examination to be performed by a
102 physician chosen from a list approved by the department. The
103 department may seek the advice of established medical organizations
104 or licensed health professionals in determining the nature and scope of
105 any diagnostic examinations to be used as part of any such physical or
106 mental examination. The chosen physician shall make a written
107 statement of his or her findings.

108 (i) If the health care professional fails to obey a department order to
109 submit to examination or attend a hearing, the department may
110 petition the superior court for the judicial district of Hartford to order
111 such examination or attendance, and said court or any judge assigned
112 to said court shall have jurisdiction to issue such order.

113 (j) Subject to the provisions of section 4-182 of the general statutes,
 114 no license shall be restricted, suspended or revoked by the Department
 115 of Public Health, and no health care professional's right to practice
 116 shall be limited by the department, until the health care professional
 117 has been given notice and opportunity for hearing in accordance with
 118 said section.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2015	New section
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Statement of Legislative Commissioners:

In Section 1(b)(1), "health care provider" was changed to "health care professional" for internal consistency; in Section 1(b)(2) "hospital shall file" was changed to "hospital shall, and any other person may, file" for internal consistency and "as described in this subsection" was deleted for clarity; in Section 1(c) "medicine" was deleted for accuracy; in Section 1(d) "arising out of the possession" was changed to "arising out of an allegation of the possession", "alcohol, mental illness or" was changed to "alcohol or diagnosed with a mental illness or" and "such arrest," was changed to "such arrest or diagnosis" for clarity and internal consistency; in Section 1(g), "investigation shall be confidential and" was changed to "investigation shall be confidential prior to the conclusion of such eighteen-month period and" for internal consistency and "pursuant to subdivision (12)" was changed to "as provided in subdivision (12)" for clarity; in Section 1(h) "examining physician" was changed to "chosen physician" for clarity and internal consistency; and in Section 1(j) "in accordance with the regulations established by the commissioner pursuant to said section" was changed to "in accordance with said section" for accuracy and clarity.

PH *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Public Health, Dept.	GF - Cost	138,048	202,362
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	51,643	78,213

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost to the Department of Public Health (DPH) of \$138,048 in FY 16 and \$202,362 in FY 17 from increased investigations due to the expanded reporting of impaired health care professionals to cover all licensed or permitted health care professionals required under the bill.

Current law requires that DPH investigate reports of a physician or physician assistant unable to practice due to impairment. The bill expands the requirement to include 31 additional health care professions.

The DPH costs are comprised of \$133,618 in FY 16 and \$202,362 for Personal Services to support 2 Special Investigator positions and 1 staff Attorney position (effective 10/1/15) needed to work on the investigatory and prosecutory process from the estimated 250 to 300 additional cases resulting from the expansion of professions covered

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

by the bill. Additionally, \$4,430 is required in Other Expenses in FY 16 for computers, software and scanners.

The State Comptroller fringe benefit cost for the Special Investigator and Staff Attorney Positions is \$51,643 in FY 16 and \$78,213 in FY 17.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6287*****AN ACT CONCERNING REPORTS OF IMPAIRED HEALTH CARE PROFESSIONALS.*****SUMMARY:**

By law, physicians, physician assistants, and hospitals must notify the Department of Public Health (DPH) if a physician or physician's assistant is or may be unable to practice with skill and safety due to impairment. The law also establishes procedures for DPH to follow when it receives such notice. The bill expands the reporting requirement to cover all licensed or permitted health care professionals.

It establishes similar (1) requirements for hospitals and other licensed or permitted health care professionals to report to DPH suspected impairment that may limit a person's ability to practice with skill and safety and (2) procedures for DPH to follow when it receives such notice.

Under certain circumstances, the bill allows a health care professional or hospital to satisfy the bill's reporting requirements by referring the impaired health care professional for intervention to the professional assistance program for DPH-regulated professionals (currently, the Health Assistance InterVention Education Network (HAVEN)).

Under the bill, covered health care professionals include: chiropractors, naturopaths, podiatrists, athletic trainers, occupational and occupational therapy assistants, physical therapists and physical therapy assistants, radiographers, radiologic technologists, radiologist assistants, nurses, nurse-midwives, dentists, dental hygienists, optometrists, opticians, respiratory care practitioners, psychologists,

marriage and family therapists, clinical and master social workers, alcohol and drug counselors, professional counselors, veterinarians, massage therapists, dietitian-nutritionists, acupuncturists, paramedics, embalmers and funeral directors, hearing instrument specialists and speech and language pathologists.

EFFECTIVE DATE: October 1, 2015

PETITIONS

The bill requires health care professionals and hospitals, and allows anyone else, to file a petition when the individual or hospital has information that appears to show that a health care professional is, or may be, unable to practice his or her profession with reasonable skill or safety because of:

1. physical illness or loss of motor skill, including deterioration due to aging;
2. emotional disorder or mental illness;
3. drug abuse or excessive use, including alcohol, narcotics, and chemicals;
4. illegal, incompetent, or negligent conduct in the professional's practice;
5. possession, use, prescription for use, or distribution of controlled substances or prescription drugs, except for therapeutic or other medically necessary proper purposes;
6. misrepresentation or concealment of a material fact when obtaining or applying for reinstatement of a professional license; or
7. violation of any law or regulation governing the health care professional.

A health care professional or hospital must, and anyone else may,

file a petition with DPH within 30 days of obtaining information to support the petition. Each petition must (1) be filed on forms the department supplies, (2) be signed and sworn, and (3) state in detail the reasons for the petition.

INVESTIGATIONS

DPH must investigate all petitions it receives under the bill's provisions to determine if there is probable cause to issue charges and institute proceedings against the professional (see BACKGROUND).

The investigation must be concluded within 18 months after the petition is filed with the department. During that time:

1. the investigation is generally confidential, but the department must provide information to the person who filed the petition and
2. no one may disclose his or her knowledge of the investigation to a third party unless the health care professional being investigated requests an open investigation and disclosure.

After the 18-month period, the investigation record becomes a public record for Freedom of Information Act purposes.

Probable Cause

If DPH determines probable cause exists to charge the health care professional, the entire proceedings record becomes public unless the department determines that the professional is an appropriate candidate for participation in the assistance program.

If, during the 18-month investigation period, DPH finds no probable cause, the petition and the investigation record remain confidential, except (1) the department may provide the petitioner, upon request, information about the investigation and a chance to review the investigation notes if the petitioner also alleged incompetence, negligence, fraud, or deceit or (2) the professional may request that the petition and record be open.

Physical or Mental Examination

Under the bill as part of an investigation, DPH may order the health care professional to submit to a physical or mental examination by a physician chosen from a DPH-approved list. (Presumably, the professional selects the physician.) DPH may seek advice from established medical organizations or licensed health professionals to determine the nature and scope of diagnostic examinations that such physical or mental examinations should include. The chosen physician must make a written statement of his or her findings.

If the health care professional does not obey a DPH order to submit to an examination or attend a hearing, DPH may petition Hartford Superior Court to order the examination or attendance.

Under the bill, DPH may not restrict, suspend, or revoke a health care professional's license, or limit his or her right to practice, until he or she has been given notice and the opportunity for a hearing in accordance with the Uniform Administrative Procedure Act.

REFERRALS AND LIABILITY

Under the bill, a health care professional or hospital that refers an impaired professional for intervention to the assistance program satisfies the bill's reporting requirement if the impairment is due to chemical dependency, emotional or behavioral disorder, or physical or mental illness.

Additionally, the assistance program and any professional, hospital, or person who files a petition with DPH in accordance with the bill's provisions or provides information to DPH or the assistance program about an impaired professional, are (1) immune from liability for damage or injury to the professional without a showing of malice and (2) entitled to (a) indemnification and (b) defense by the state attorney general's office.

NOTIFICATION REQUIREMENTS

The bill requires a health care professional to notify DPH if he or she is (1) arrested for alleged possession, use, prescription for use, or

distribution of a controlled substance or prescription drug or alcohol or (2) diagnosed with a mental illness or behavioral or emotional disorder. The professional must provide the notice within 30 days of the arrest or diagnosis and he or she may satisfy the obligation by seeking intervention with the assistance program.

The bill also requires a professional to report to DPH any disciplinary action that was taken against him or her (1) that is similar to those actions DPH may take against professionals under its jurisdiction (e.g., license or permit revocation or suspension) and (2) by another state, the District of Columbia, a U.S. possession or territory, or a foreign jurisdiction. The professional must provide the notice within 30 days of the action.

Under the bill, a health care professional's failure to report may constitute grounds for DPH to take disciplinary action.

BACKGROUND

DPH Investigations

The law authorizes DPH, in connection with any investigation it conducts, to administer oaths, issue subpoenas, compel testimony and order the production of books, records, and documents. Additionally, DPH may also restrict, suspend, or otherwise limit the license or permit of anyone subject to department licensure or regulation under an interim consent order while an investigation is pending (CGS § 19a-14).

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 27 Nay 0 (03/27/2015)